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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,141	06/19/2003	Julie Brumbelow	03269.0014U3	7124
23859	7590	12/04/2003	EXAMINER	
NEEDLE & ROSENBERG, P.C. SUITE 1000 999 PEACHTREE STREET ATLANTA, GA 30309-3915			YAO, SAMCHUAN CUA	
			ART UNIT	PAPER NUMBER
			1733	

DATE MAILED: 12/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/601,141

Applicant(s)

BRUMBELOW ET AL.

Examiner

Sam Chuan C. Yao

Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 06-19-03
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The references cited by Applicant on the 1449's have been made of record.

While the statements filed clearly do not comply with the guidelines set forth in MPEP 2004 regarding both the number of references cited and elimination of clearly irrelevant art and marginally pertinent cumulative information, compliance with these guidelines is not mandatory. Furthermore, 37 CFR 1.97 and 1.98 do not require that the information be material, rather they allow for submission of information regardless of its pertinence to the claimed invention. Also, there is no requirement to explain the materiality of submitted references, however, the cloaking of a clearly relevant reference by inclusion in a long list of citations may not comply with Applicant's duty of disclosure, see *Penn Yan Boats, Inc. v. Sea Lark Boats Inc.*, 359 F. Supp. 948, aff'd 479 F. 2d. 1338.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 7, 10 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Ucci (US 4,643,930).

Ucci discloses a process of making a carpet, the process comprises forming a tufted pile on a primary backing; applying an adhesive onto the underside surface of the primary backing, wherein the adhesive comprises an aqueous dispersions of thermoplastic particles such as polyethylene-vinylacetate, thickener; providing a secondary backing on the adhesive coated primary backing; and then curing the adhesive. Though not expressly disclosed, heat is inherently applied to activate the adhesive. Moreover, the particulate polyethylene-vinylacetate is at least melted to fix the loops yarn of the carpet pile.

5. Claims 7, 10, and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Justesen et al (US 5,902,663) using the publication date of 03-09-95 of WO 95/06771.

Justesen et al discloses a process of making a carpet, the process comprises forming a loop pile material (2) to a primary backing (3); applying an adhesive onto the underside surface of the primary backing, wherein the adhesive comprises an aqueous dispersion of polyolefin such as polyethylene, polypropylene, etc. particles; joining a secondary backing (5) to the adhesive coated underside surface of the primary backing; heat-pressing the joined layers to melt the adhesive (col. 7 lines 32-38; col. 8 lines 39-42; col. 11 line 59 to col. 12 line 54; col. 15 to col. 16). Though not expressly disclosed, it is taken that the loop pile material is tufted to the primary backing, and the melted adhesive inherently "fix the loops of yarn to the primary backing material" as evidence from the following passages: "These compositions provide good balance between high

tuft lock and pile retention, ..." (col.7 lines 44-45); and "The advantages of dispersion binders ... provide very strong fibre anchoring as well as tuft lock." (col. 7 lines 53-55).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8, 11, 16-18, 29, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Justesen et al (US 5,902,663) as applied to claim 7 or 10 in numbered paragraph 5.

With respect to claims 8, 11 and 16-18, the recited limitations of these claims are taken to be result effective variables, routinely optimize by those versed in the art. Hence, absent any showing of unexpected benefit, it would have been obvious in the art i) to provide the recited amount of particles in a binder dispersion in claim 8 and the amount of polyolefin that is applied onto the underside surface of a primary backing recited in claim 18; and ii) to operate at the recited temperature ranges of claims 16-17 using a conventional heating means such as an oven;

because one in the art would have determined, by routine experimentation, a workable amount of binder particles in order to form an effective locking of the tuft yarns and bonding of the secondary backing to the underside surface of the primary backing; and because one in the art would have also determined a suitable operating temperature using a conventional heating means to ensure that the binder particles are

completely melted in order to provide effective bonding of the backings and locking of the tuft yarns. Moreover, one in the art would have determined a workable characteristic for the particulate binder in order to effectively lock the tuft yarns to the primary backing, hence claim 11 would have been obvious in the art.

With respect to claim 29, since it is conventional in the art to form first form greige goods by locking tuft yarns using a binder; and then adhesively joining a secondary backing to a greige good, it would have been obvious in the art to apply an additional adhesive layer in forming the carpet of Justesen et al.

With respect to claim 32, since it is a common practice in the art to provide a fibrous web such as a scrim which is impregnated with a thermo-settable resin, wherein the resin is heat-cured to enhance the stability of a resultant carpet, this claim would have been obvious in the art.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Justesen et al (US 5,902,663) in view of Hackler (US 4,871,604) as applied to claim 7 in numbered paragraph 5 above.

It would have been obvious in the art to form the dispersion binder of Justesen having the average size of about 1-300 microns as such is notoriously well known in the art as exemplified in the teachings of Hackler (col. 2 lines 56-65). One in the art would have chosen a known workable binder particle size in the art in making the binder dispersion of Justesen.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Justesen (US 5,902,663) as applied to claim 7 in numbered paragraph 5 above, and further in view of Stahl (US 3,583,936).

It would have been obvious in the art making the carpet of Justesen to form a binder dispersion particles comprising ethylene acrylic acid because: a) Justesen is not restrictive to a particular type of polyolefin particles in forming a binder dispersion; b) Stahl discloses the desirability of forming a carpet backsizing adhesive comprising ethylene copolymers containing acrylic acid, etc. (col. 2 lines 6-61; col. 3 lines 54-75); and c) one in the art would have chosen any well known polyolefin adhesives (including ethylene acrylic acid) which are known to be effective for making carpets.

10. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Justesen (US 5,902,663) as applied to claim 7 in numbered paragraph 5 above, and further in view of Iacoviello (US 5,084,503).

It would have been obvious in the art to add surfactant and/or thickener to the binder dispersion of Justesen because it is a common practice in the art to provide a surfactant material and a thickener to a binder dispersion for a carpet in order to enhance the binder dispersion characteristics as exemplified in the teachings of Iacoviello (abstract; col. 4 lines 18-68; col. 6 line 67 to col. 7 line 26).

11. Claims 19-20, 27-28, and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Justesen et al (US 5,902,663) as applied to claim 7 in numbered paragraph 5 above, and further in view of Fink (US 5,240,530).

It would have been obvious in the art to use an olefin material for all components of a carpet in making the carpet of Justesen et al because Fink discloses the advantage of using an polyolefin material for all components of a carpet to make the carpet readily recyclable; and because it is conventional in the art to use an olefin pile yarn, an olefin primary backing and an olefin secondary backing. Moreover, it would have been obvious in the art to directly extrude a secondary backing onto the underside surface of the primary backing as such is old in the art as exemplified in the teachings of Fink (figure 6). The incentive on the part of one having ordinary skill in the art for making this modification would have simply been to obtain the self-evident advantage of obviating the need to re-heat the extruded sheet to soften and bond the sheet onto the underside surface of the primary backing.

12. Claims 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference(s) set forth in numbered paragraph 5 or 11 above as applied to claim 7 or 20, and further in view of Lai et al (US 5,272,236) and optionally further in view of Jialanella (US 5,741,594).

It would have been obvious in the art to use the polyolefin material of Lai et al in making the carpet secondary backing of Justesen et al because: a) as noted in numbered paragraph 12, Fink discloses the desirability of forming an extruded backing sheet in making a carpet, and further discloses preferring to forming an elastomeric secondary backing to provide a non-skid characteristic to a carpet at a lower cost than a rubber material (col. 7 lines 12-30); b) Lai et al discloses forming an elastic olefin material having improved characteristics such as melt-elasticity, processability, etc. (col.

2 lines 22-40); and optionally, c) Jialanella discloses using the elastic olefin material of Lai et al as a backing for a carpet (abstract; col. 3 lines 31-43). It directly follows that since Applicant is using the same polyolefin material as Lai et al for the extruded backing sheet as evidence from Applicant's specification on page 20 full paragraph 1, the recited materials in these claims would have been obvious in the art.


Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note: **item number 3, application number 10/918,227 cited by Counsel on page 2 of an IDS does not exist.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (703) 308-4788. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff H Aftergut can be reached on (703) 308-2069. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7115 for regular communications and (703) 305-7718 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2058.


Sam Chuan C. Yao
Primary Examiner
Art Unit 1733

scy
December 1, 2003